

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TERIE SUE DAVIDSON,

Plaintiff,

v.

WASHINGTON CORRECTIONS  
CENTER FOR WOMEN, et al.,

Defendants.

CASE NO. C19-6134 BHS

ORDER ADOPTING IN PART  
AND REJECTING IN PART AS  
MOOT REPORT AND  
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 9, Plaintiff Terie Sue Davidson’s (“Plaintiff”) objections to the R&R, Dkt. 10 and Plaintiff’s application for court-appointed counsel, Dkt. 11.

Plaintiff initiated this matter on November 25, 2019. Dkt. 1. She paid the filing fee on January 8, 2020 but overpaid the \$400 fee by \$105. On January 21, 2020, after finding Plaintiff’s complaint deficient upon screening, Judge Christel issued an order requiring Plaintiff to file an amended complaint remedying the deficiencies identified in the order. Dkt. 7. Instead of filing an amended complaint, Plaintiff brought a “motion to withdraw and revoke case” and sought a refund of her filing fee. Dkt. 8. On March 12, 2020, Judge Christel issued the R&R, construing Plaintiff’s motion as a motion for voluntary dismissal and recommending that it be granted. Dkt. 9. Judge Christel also

1 found that Plaintiff was not entitled to a refund of her filing fee but recommended that  
2 she be refunded her \$105 overpayment. *Id.* On March 17, 2020, Plaintiff filed a letter to  
3 the Court, which the Court construes as objections to the R&R. Dkt. 10. On April 9,  
4 2020, Plaintiff filed an application for court-appointed counsel. Dkt. 11.

5 The district judge must determine de novo any part of the magistrate judge's  
6 disposition that has been properly objected to. The district judge may accept, reject, or  
7 modify the recommended disposition; receive further evidence; or return the matter to the  
8 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

9 Judge Christel recommended that Plaintiff's request for voluntary dismissal be  
10 granted. Dkt. 9. However, Plaintiff has had a change of heart. Her objections state that  
11 her request for dismissal was based upon a misunderstanding that she could obtain a  
12 refund of her filing fee, and she now wishes to proceed with her case. Dkt. 10. The  
13 Court therefore declines to adopt this portion of the Report and Recommendation, which  
14 is moot in light of Plaintiff's withdrawal of her request for voluntary dismissal.

15 Plaintiff's objections and a later-filed motion request the appointment of counsel.  
16 Dkts. 10, 11. There is no constitutional right to appointed counsel in a §1983 action.  
17 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Appointing counsel is within  
18 "the sound discretion of the trial court and is granted only in exceptional circumstances."  
19 *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of exceptional  
20 circumstances requires at least an evaluation of the likelihood of the plaintiff's success on  
21 the merits and an evaluation of the plaintiff's ability to articulate her claims "in light of  
22

1 the complexity of the legal issues involved.’’ *Wilborn v. Escalderon*, 789 F.2d 1328,  
2 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

3 In this case, the Court is unable to assess the appropriateness of appointing counsel  
4 because Plaintiff has not yet filed an adequate complaint; the Court therefore cannot  
5 determine whether Plaintiff is likely to succeed on the merits or presents exceptional  
6 circumstances. Therefore, the Court **DENIES** Smith’s motion without prejudice.

7 **ORDER**

8 The Court having considered the R&R, Plaintiff’s objections, and the remaining  
9 record, does hereby find and order as follows:

- 10 (1) The R&R is **ADOPTED** in part and **REJECTED** in part as moot;  
11 (2) Plaintiff shall be refunded the \$105 she overpaid for her filing fee;  
12 (3) Plaintiff’s case will not be dismissed in light of her withdrawal of her  
13 request for voluntary dismissal. Plaintiff shall file an amended complaint  
14 as directed by Judge Christel’s order dated January 21, 2020, Dkt. 7, **on or**  
15 **before June 22, 2020;**  
16 (4) Plaintiff’s request for the appointment of counsel, Dkt. 11, is **DENIED**  
17 **without prejudice;** and  
18 (5) This matter is re-referred to Judge Christel for further proceedings.

19 Dated this 21st day of May, 2020.

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22 BENJAMIN H. SETTLE  
United States District Judge